

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION**

The State of Texas,
Plaintiff,

v.

Alejandro Mayorkas, *et al.*,
Defendants.

)
)
)
)
)
)
)
)
)
)
)

No. DR-23-CV-00055-AM

DECLARATION OF MARC BENNETT COUREY

I, Marc Bennett Courey, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information made known to me in the course of my employment, hereby declare as follows, relating to the above-captioned matter:

1. I am the Associate Chief Counsel (Enforcement and Operations), Office of Chief Counsel (OCC) for U.S. Customs and Border Protection (CBP). I have held this position since December 2015.

2. As the Associate Chief Counsel (Enforcement and Operations), I oversee, on behalf of the Chief Counsel, the development and delivery of legal advice regarding law enforcement and operational matters within the purview of CBP, including the administration of customs, immigration, and other federal law, to the senior leadership and other officials of CBP. I manage a Headquarters-based staff including approximately 27 attorneys, along with three legal training offices in Georgia, New Mexico, and West Virginia, totaling approximately 28 additional attorneys. The Enforcement and Operations section is charged with nationwide programmatic responsibility for legal advice, litigation, and legal training regarding matters within the subject matter purview of the section.

3. With over 60,000 employees, CBP is one of the world's largest law enforcement organizations. As the nation's unified border entity, and in implementation of 6 U.S.C. § 211, CBP takes a comprehensive approach to border management and control, combining customs, immigration, border security, and agricultural protection into one coordinated and supportive activity. CBP's mission priorities include countering terrorism, combating transnational crime, securing the border, facilitating lawful trade and protecting revenue, and facilitating lawful travel. CBP carries out its mission priorities through its subcomponents, which include the U.S. Border Patrol. The U.S. Border Patrol is responsible for patrolling thousands of miles across the Mexican and Canadian land and maritime borders as well as along our coastal waters.

4. I am familiar with the above-captioned litigation, as attorneys on my staff and within the Texas region are currently assisting the U.S. Department of Justice (DOJ) in defending CBP in this litigation.

5. I am also familiar with the Court's November 9, 2023 Order ("Order") requiring CBP to provide the Court, by the day of the second in-person preliminary injunction hearing: (1) "any and all documents including but not limited to reports and emails, among United States Border Patrol, especially the Del Rio Sector agents, regarding or referencing the Plaintiff's concertina wire barriers or other barriers located in Maverick County, Texas, as well as any and all documents which regard or reference impediments to said agents' performance as a result of the barriers," and (2) "communications, including but not limited to emails, from and including March 6, 2021, through today regarding or referencing the Plaintiff's and Defendants' cooperation on implementing, facilitating, managing, maintaining, damaging, destroying, or interfering with the Plaintiff's barriers, specifically the concertina wire barriers, along the Texas-Mexico border." Dkt. 33.

6. Given the scope of information implicated in the terms of the Order, it is not feasible for CBP to search for, collect, review, and produce all documents called for in the Order. As part of its day-to-day operations, CBP regularly generates, receives, and sends large quantities of electronically stored information. This electronically stored information is stored in various locations, including CBP's email system. Data gathered by CBP's Office 365, Email & Azure Services ("O365") Team shows that, from January to October 2023, CBP's email system was used to receive over 1 billion emails and send over 65 million emails. Data gathered by CBP's O365 Team further shows that, on a monthly basis during the same timeframe, CBP's email system was used to receive an average of more than 100 million emails and send an average of over 6 million emails.

7. CBP has approximately 16,000 Border Patrol Agents assigned to the southwest border, comprising approximately 26% of the CBP employee workforce. Applying the monthly averages set forth in Paragraph 6, and limiting the data parameters from March 6, 2021 to the present, searching for emails responsive to the Court's Order would necessitate searching a universe of approximately 882 million emails, consisting of approximately 832 million emails received and approximately 50 million emails sent. Limiting the search to the more than 1,500 Border Patrol Agents assigned to U.S. Border Patrol's Del Rio Sector would mitigate the universe of emails, though not adequately, still leaving approximately 85 million emails, consisting of 80 million emails received and 4.8 million emails sent during the period of March 6, 2021 to November 9, 2023.

8. Given these functional limitations, as customary when engaging in electronic discovery, and in an endeavor to locate key responsive documents, on November 9, 2023, OCC requested that CBP's Office of Information Technology eDiscovery Team collect potentially responsive

electronically stored information using certain search parameters. Specifically, OCC requested that CBP's Office of Information Technology eDiscovery Team collect potentially responsive electronically stored information by running enumerated search terms across data in two locations—email and OneDrive¹ accounts—for seven custodians selected on the basis of their operational responsibilities:

CBP Officials	Date Range	Search Terms
David BeMiller Chief, Law Enforcement Operations Headquarters	March 6, 2021 through November 9, 2023	Barrier
Juan Bernal (Acting) Chief Patrol Agent Del Rio Sector		Wire
Milton Moreno (Acting) Deputy Chief Patrol Agent Del Rio Sector		Impediments
Micky Donaldson Patrol Agent in Charge Eagle Pass North Station		Concertina
George Cavazos Deputy Patrol Agent in Charge Eagle Pass North Station		Lock
Gerardo Inocencio Patrol Agent in Charge Eagle Pass South Station		Fence
Mario Trevino, Jr. Deputy Patrol Agent in Charge Eagle Pass South Station		Gate
		Razor
		C-wire
		Impede

9. On November 11, 2023, OCC's RelativityOne Support Team, comprised of technical experts charged with assisting CBP in using RelativityOne, uploaded the resulting collection into its instance of RelativityOne, a state-of-the-art document review software. OCC's RelativityOne Support Team then used RelativityOne's de-duplication capability to identify and remove exact

¹ Microsoft's OneDrive is a cloud storage service. CBP users save, *inter alia*, files created with Microsoft 365's desktop apps, *e.g.*, Microsoft Word, PowerPoint, Excel, to OneDrive.

copy standalone documents, *e.g.*, emails, .doc files, and family groups, meaning emails with their attachments, from the collection. Following de-duplication, 310,636 documents remained in the collection, comprised of 152,096 emails and 158,540 email attachments and standalone documents.

10. OCC's RelativityOne Support Team analyzed a random sample consisting of 9,961 of the 310,636 documents remaining in the collection and determined that the average document in that sample is 16.15 pages. As such, the 310,636 documents remaining in the collection likely equate to over 5 million pages. Estimating a review time of 2 minutes per page, which includes review for responsiveness, sensitive information, and privileged information, review of the collection would likely take over 10 million minutes, or over approximately 167,000 hours to complete. Even if all of OCC's approximately 321 nationwide attorneys were assigned, full-time (40 hours per week) to conduct a review of this universe—an untenable proposition given the myriad legal matters OCC supports, including cases in federal court nationwide—it would likely take at least 13 weeks to complete.

11. Given the untenability of such a project, and as customary when engaging in electronic discovery, OCC requested that OCC's RelativityOne Support Team apply proximity searches to the 310,636 documents remaining in the collection. To formulate these proximity searches, OCC reviewed a search term report that OCC's RelativityOne Support Team generated in RelativityOne. The search term report showed the frequency in which key terms appear in the 310,636 documents remaining in the collection, both on their own and with other key terms. The proximity searches² were as follows:

² Proximity searches are searches where words or phrases must be within a certain proximity of one another, notated by a "w/" followed by a number indicating the required proximity.

- a. “c-wire” w/8 (Texas or DPS or TX or TMD or TXNG)³
- b. concertina w/8 (Texas or DPS or TX or TMD or TXNG)
- c. Fence w/8 rancher
- d. Gate w/8 rancher
- e. Gate w/8 (fence and River)
- f. lock w/8 rancher
- g. imped~ w/8 (Texas or DPS or TX or TMD or TNG)⁴
- h. Gate w/8 Berm
- i. Gate w/8 barrier
- j. Gate w/8 dirt
- k. cooperat* w/8 (concertina or c-wire)⁵
- l. notif* w/8 (concertina or c-wire)
- m. cooperat* w/8 (Texas or DPS or TX or TMD or TNG)
- n. notify~ w/8 (Texas or DPS or TX or TMD or TNG)
- o. imped~ w/8 river
- p. “cyclone fence” w/8 river
- q. (“Conex box” or razor or concertina) w/8 river
- r. “razor wire” w/8 river
- s. Concert* w/8 river

12. These proximity searches narrowed the collection of 310,636 documents to 6,096 documents requiring review.

13. Document review, and especially privilege and confidentiality review, which is part of document review, is a labor-intensive, time-consuming process. OCC attorneys sometimes need to discuss privilege issues with the CBP clients and, in many cases, other government agencies. Discussions with the CBP clients can be especially time-consuming; they may require consultation with U.S. Border Patrol (both at headquarters and in the field), as well as other CBP clients. Depending on the information in question, privilege issues may also require consultation with the Office of the Commissioner, the U.S. Department of Homeland Security (DHS), and other DHS components, such as U.S. Immigration and Customs Enforcement and U.S.

³ The term “c-wire” is often used as shorthand to refer to concertina wire. The quotation marks (“ ”) are used to enclose search values containing more than one word or hyphenated words.

⁴ The tilde (~) is the character used for stemming searches when added at the end of the root word. For example, a search on apply~ returns documents containing the words apply, applying, applies, and applied.

⁵ The asterisk (*) is wild card used in searching to correspond with any numbers or characters. For example, ap*ed matches applied, approved, and so on.

Citizenship and Immigration Services. Further, privilege review also generally involves consultation with the DOJ litigation team.

14. Additionally, conducting a thorough privilege and sensitivity review of every document is essential in endeavor to ensure that law enforcement sensitive information is protected, CBP protects information prohibited from disclosure by law, and CBP protects law enforcement, deliberative process, and attorney-client privileged information and work product. As such, this review cannot be short-circuited.

15. Currently, 14 OCC attorneys are engaged in reviewing the narrowed universe of 6,096 documents for responsiveness and marking those determined to be responsive for sensitive and/or privileged information. These attorneys are continuing to review these documents as expeditiously as possible in endeavor to comply with the Court's Order in good faith.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 14th day of November, 2023.

Marc Bennett Courey
Associate Chief Counsel
(Enforcement and Operations)
Office of Chief Counsel
U.S. Customs and Border Protection